

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CAPTAIN SEAN MILLER (RET.),)	
)	
Plaintiffs,)	Case No. 3:18-cv-00113-TMR-MJN
)	
vs.)	Judge Thomas M. Rose
)	
GE HEALTHCARE, INC., <i>et al.</i>,)	Magistrate Judge Michael J. Newman
)	
)	
Defendants.)	

**DEFENDANTS GUERBET LLC AND LIEBEL-FLARSHEIM COMPANY, LLC’S
JOINDER TO MOTION TO DISMISS PLAINTIFF’S COMPLAINT (ECF No. 36)**

Defendants Guerbet LLC and Liebel-Flarsheim Company, LLC (“Guerbet Defendants”), by and through undersigned counsel, hereby join in the Motion to Dismiss and Memorandum in support thereof filed by Defendants GE Healthcare Inc., GE Healthcare AS, and General Electric Company on May 3, 2018 (ECF No. 36) (the “Motion to Dismiss”). Guerbet Defendants join the Motion to Dismiss in all respects concerning Rule 12(b)(6) of the Rules of Civil Procedure (i.e., Sections I and II thereof). Guerbet Defendants do not join the Motion to Dismiss with respect to Rule 12(b)(5) (Section III thereof).

As addressed in the Motion to Dismiss, Plaintiff Captain Sean Miller’s (“Plaintiff”) claims are not pled in compliance with the Ohio Product Liability Act (“OPLA”), Ohio Rev. Code § 2307.71, *et seq.*, and therefore should be dismissed. (*See* Motion to Dismiss, Section I.) Moreover, Plaintiff’s punitive damages claims should be dismissed because the OPLA only permits such claims in cases where the pharmaceutical manufacturer committed fraud on the FDA. (*See* Motion to Dismiss, Section II.)

Guerbet Defendants reserve all rights to raise additional Rule 12(b) defenses and/or other affirmative defenses to Plaintiff's complaint on or before the deadline for their responsive pleading. By filing this joinder on behalf of Guerbet Defendants, the undersigned counsel do not intend to waive defenses available at this stage of the proceedings.

Dated: May 9, 2018

Respectfully submitted,

s/Wendy West Feinstein

Wendy West Feinstein * (0064973)

*Trial Attorney

MORGAN, LEWIS & BOCKIUS LLP
One Oxford Centre, Thirty-Second Floor
Pittsburgh, PA 15219-6401
Telephone: 1.412.560.3300
Facsimile: 1.412.560.7001 (fax)
wendy.feinstein@morganlewis.com

Brian W. Shaffer (*pro hac vice* forthcoming)
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
Telephone: 1.215.963.5000
Facsimile: 1.213.963.5001
brian.shaffer@morganlewis.com

Jamie L. Kendall (*pro hac vice* forthcoming)
THE KENDALL LAW FIRM PC
1201 County Line Road – Suite G
Bryn Mawr, PA 19010
Telephone: 1.610.756.0200
Facsimile: 1.610.756.0202
jkendall@tkfirm.com

ATTORNEYS FOR GUERBET LLC AND LIEBEL-
FLARSHEIM COMPANY, LLC

CERTIFICATE OF SERVICE

I, Wendy West Feinstein, an attorney, hereby certify that on May 9, 2018, a copy of Defendants Guerbet LLC and Liebel-Flarsheim Company, LLC's Joinder to Motion to Dismiss was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's CM/ECF and copies will be mailed via U.S. Mail to those parties to whom electronic notice has not been sent.

Todd Alan Walburg, Esquire
Cutter Law, P.C.
401 Watt Avenue
Sacramento, CA 95864

J. Philip Calabrese, Esquire
Porter Wright Morris & Arthur LLP
950 Main Avenue
Cleveland, OH 44113

Justin James Joyce, Esquire
Porter Wright Morris & Arthur LLP
250 East Fifth Street, Suite 220
Cincinnati, OH 45202

Jeremy Andrew Moseley, Esquire
Michael Lawrence O'Donnell, Esquire
Wheeler Trigg O'Donnell LLP
370 17th Street, Suite 4500
Denver, CO 80202

s/Wendy West Feinstein
Wendy West Feinstein